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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re MATTHEW V., a Person Coming Under
the Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

CYNTHIA A.,

Defendant and Appellant.

F063411

(Super. Ct. No. 515651)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and
Appellant.

* Before Levy, Acting P.J., Gomes, J. and Dawson, J.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County Counsel, for Plaintiff and Respondent.

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Cynthia A. (mother) appeals from an order terminating parental rights (Welf. & Inst. Code, § 366.26)¹ to her four-year-old son Matthew V. Mother contends she established termination would be detrimental to Matthew because of their parent-child relationship (§ 366.26, subd. (c)(1)(B)(i)). On review, we disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the Stanislaus County Community Services Agency (Agency) in May 2007, when Matthew was born at 32 weeks gestation and his meconium tested positive for THC, opiates and hydrocodone. Mother had a past history of methamphetamine use, a criminal history of substance abuse, and had entered and left Stanislaus Recovery Center numerous times. Her three older sons lived with their father in another city, while her daughter, Rachel, lived with her.² Mother received family maintenance services, which ended several months later after mother tested positive for drugs and failed to attend treatment or follow through with recommendations.

Mother again received family maintenance services beginning in October 2009, after the Agency investigated a referral alleging she used drugs around Matthew and thirteen-year-old Rachel was not attending school. When mother failed to follow through with services, however, the Agency placed Matthew in protective custody and filed a

¹ All statutory references are to the Welfare and Institutions Code.

² Matthew's presumed father is Shawn V. Genetic testing performed during the course of these proceedings revealed that Joe H. is Matthew's biological father. The juvenile court denied Joe's request for presumed father status and reunification services, which orders we affirmed on Joe's appeal from them. (*In re Matthew V.* (May 12, 2011, F060688 [nonpub. opn.].) While Shawn received reunification services, they were terminated at the same time as mother's services. Neither man is a party to this appeal.

dependency petition.³ On January 26, 2010, Matthew was placed in the home of Mr. and Mrs. L., where he remained throughout these proceedings. Several months later, the juvenile court granted the L.'s request for de facto parent status.

In April 2010, the juvenile court exercised its dependency jurisdiction over Matthew (§ 300, subd. (b)), removed him from mother's custody, and gave her reunification services. Mother was given twice monthly visitation. Social worker Katherine Croom had observed mother and Matthew during visits. She reported that Matthew was very affectionate towards mother, who played and interacted appropriately with him, the visits appeared positive for him, and Matthew was "extremely bonded" to mother. In August 2010, mother began receiving weekly visits. Mother visited regularly, missing only a few visits. Croom continued to report that Matthew was "extremely bonded" to mother and the visits went well, with mother demonstrating her love and support through affection and play.

The juvenile court terminated reunification services in February 2011 due to mother's failure to participate regularly in them, and set a section 366.26 hearing to select and implement a permanent plan for Matthew.⁴ Mother's visitation was reduced to one visit per month.

Social worker Croom prepared a "366.26 WIC Report" in which she recommended the court terminate parental rights and implement the permanent plan of adoption. The social worker was confident that if parental rights were terminated, the

³ Rachel also was a subject of the petition. She was not detained, however, because she was on runaway status, and is not the subject of this appeal.

⁴ Mother filed a notice of intent to file a writ petition challenging the setting of the section 366.26 hearing. On April 19, 2011, this court, in case number F061959, issued an order dismissing the petition for extraordinary writ as abandoned since neither mother, acting in propria persona, nor her counsel filed a petition within the time frame set forth in California Rules of Court, Rule 8.452(c)(1).

L.'s would adopt Matthew, as they were committed to him, had provided him with stability, love and support, and had provided the Agency with everything required to adopt him. While Matthew was too young to offer a meaningful statement about adoption, it was clear that he was very attached to the L.'s and fully integrated into their family.

With respect to visitation, Croom stated that Matthew had regular contact with mother and she had visited him once per month since the February 2011 review hearing. Matthew's maternal grandmother sometimes attended the visits. During visits, mother read to and played with Matthew, who appeared to enjoy the visits.

At the section 366.26 hearing,⁵ several witnesses testified on mother's behalf. 15-year-old Rachel testified that she saw mother with Matthew before he was placed into foster care, and mother was good with him. Rachel had attended at least five of mother's visits with Matthew in 2011. When asked to describe the relationship between mother and Matthew, Rachel responded, "[h]e still knows us." According to Rachel, Matthew recognized mother and called her "the other mom." While Matthew recognized Rachel, he did not call her by name or "really say anything" to her. Rachel did not think she had much of a relationship with Matthew, though she would like to have one. During visits, which Matthew seemed to enjoy, he would come up to mother and they would hug and kiss; Matthew would say "I love you, Mom." Mother gave Matthew pictures of the family, and he recognized mother in the pictures. At the last visit Rachel attended, mother asked Matthew if he wanted to come back and live with her. Matthew started

⁵ Twice before the section 366.26 hearing mother's trial counsel filed section 388 petitions requesting the juvenile court return Matthew to mother's custody or, in the alternative, order an additional six months of reunification services. The juvenile court summarily denied each petition without a hearing. Mother appealed from each order. By a September 20, 2011 order in case number F062635, we dismissed the first appeal as abandoned. In the appeal from the second order, we affirmed the juvenile court's order denying the petition. (*In re Matthew V.* (Feb. 2, 2012, F063066 [nonpub. opn.].)

crying and said he wanted “his mommy and daddy[,]” by which he meant the foster parents.

Matthew’s maternal grandmother, Gloria A., testified that she regularly saw Matthew between his birth and his removal from mother’s custody in December 2009. During that time, she saw mother caring for Matthew’s daily needs, the two were affectionate, and Matthew adored mother, clinging to her and always wanting to be around her. After Matthew’s removal, Gloria visited him along with mother. Gloria described the visits as “very good.” Matthew recognized mother and always hugged and kissed her. Gloria said Matthew called mother “Mom” during visits, although she had also heard Matthew refer to his foster parents as “Mom and Dad.”

Mother lived with Gloria. According to Gloria, mother told Matthew about his room at their house and that they were waiting for him to come home. Gloria claimed Matthew talked about that room “all the time,” and has said that he wants to go to mother’s home. Gloria had also heard Matthew talk about his home with his foster parents. At the last visit, he mentioned having a dog and has said he “has stuff” at his house. Gloria said that Matthew recognizes her, calls her “Grandma,” and comes up to her and hugs her. Rachel attended some of the visits. Gloria said Matthew recognized Rachel and the two played together. Mother brought pictures of family members to visits; Matthew recognized the people in the pictures.

Social worker Croom, who authored the section 366.26 report, testified that mother had attended all of her monthly visits since the February 2011 review hearing, and prior to that, she visited regularly. Croom had observed some visits since February 2011. She had seen mother and Matthew reading and no concerns had been raised about the visits, which went well and overall were positive. Croom believed mother interacted well with Matthew and that he recognized mother as well as Gloria. During the time Croom had been supervising the case, Matthew had never asked her for additional visits with mother. Another social worker was responsible for seeing Matthew in the foster

home; that social worker had never told Croom that Matthew requested additional visits with mother. Since mother's services were terminated, mother had been consistent in asking Croom about Matthew's well-being while in foster care and seemed interested in how he was doing.

Mother testified she was Matthew's primary caregiver from his birth until he was removed from her custody; she made sure he had food and clean clothes, and did bonding activities with him such as watching TV, walking him in the stroller, playing with him and taking him to the park. Matthew went everywhere with her. Once Matthew was removed from her care, she visited him regularly; she believed the visits were positive. During visits, Matthew called her "Mom." Gloria was also at the visits and mother believed Matthew recognized her, calling her "Grandma." At visits, mother picked Matthew up and hugged him; in return, he hugged and squeezed her tight. When mother told him she missed him, he whispered in her ear, "I miss you, too." Mother believed Matthew was happy to see her, though he was shy and a little confused. Matthew never asked her when he would see her again.

Mother did not agree with the recommendation to terminate her parental rights; she wanted to maintain a relationship with Matthew "[b]ecause he's my son and I'm his mom." Mother brought family photos to visits, which she shared with Matthew. Mother always asked Matthew during visits if he was ready to come home and live with her. The last time she asked him that, he started to cry. She asked him this question "[b]ecause he's my son" and he should be home with her. Mother did not want Matthew to be adopted and felt he would be emotionally harmed if he could not visit her in the future. When asked how Matthew would be emotionally harmed if he did not have further contact with her, mother responded, "[b]ecause I'm his mom" and "his family."

County counsel made an offer of proof, which the court and counsel accepted, that were the de facto father to testify, he would state that Matthew has two photographs of

him and his mother on a table right next to his bed. The de facto mother also testified about the photographs.

In closing argument, mother's attorney urged the juvenile court to find it would be detrimental to Matthew to terminate parental rights under section 366.26, subdivision (c)(1)(B)(i), as mother had maintained regular visitation and contact with Matthew and he would benefit from continuing that relationship. The juvenile court rejected this argument. While the juvenile court did not doubt that Matthew considered mother to be his "mommy," it found that mother had not met her burden of proving that termination of the parent/child relationship would be so detrimental to Matthew that termination should not be ordered. Having found Matthew likely to be adopted, the juvenile court terminated parental rights. The juvenile court granted the foster parents' request to designate them as Matthew's prospective adoptive parents.

DISCUSSION

Mother contends there was insufficient evidence to support the juvenile court's failure to find that Matthew shared a beneficial relationship with her so that termination of parental rights would be detrimental to him. (§ 366.26, subd. (c)(1)(B)(i).) According to mother, the court should not have terminated her parental rights because she maintained regular visitation with Matthew and he was significantly bonded to her. Mother's argument is meritless, as it ignores the standard of review we apply and the law regarding termination, as well as the conflicting evidence before the juvenile court.

Once a dependency case reaches the permanency planning stage, the statutory presumption is that termination is in an adoptable child's best interests and, therefore, not detrimental. (§ 366.26, subd. (b); *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1344 (*Lorenzo C.*).) Indeed, the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specifically designated circumstances of section 366.26, subdivision (c)(1), provides a compelling reason for

finding that termination of parental rights would be detrimental to the child. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

It is the parent's burden to show that termination would be detrimental under one of the statutory exceptions. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) The beneficial relationship exception in section 366.26, subdivision (c)(1)(B)(i) involves a two-part test: (1) did the parent maintain regular visitation and contact with the child; and (2) would the child benefit from continuing the relationship. For the exception to apply, "the parent-child relationship [must] promote the well-being of the child to such a degree that it outweighs the well-being the child would gain in a permanent home with new, adoptive parents. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) A juvenile court must therefore: 'balance . . . the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.' (*Id.* at p. 575.)" (*Lorenzo C., supra*, 54 Cal.App.4th at p. 1342.)

When a court rejects a detriment claim and terminates parental rights, the appellate issue is whether the juvenile court abused its discretion in so doing. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) The decision is not reviewed, as mother argues, for substantial evidence to prove a negative, i.e. that termination would not be detrimental. To conclude there was an abuse of discretion, the proof offered must be uncontradicted and unimpeached so that discretion could be exercised in only one way, compelling a finding in the appellant's favor as a matter of law. (*Roesch v. De Mota* (1944) 24 Cal.2d 563, 570-571; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Based on our review of the record, we conclude the juvenile court properly exercised its discretion in rejecting mother's argument.

There is no dispute that mother satisfied the first part of the exception, i.e. that she maintained regular contact with Matthew. Mother failed to establish, however, the second part, namely that Matthew would benefit from continuing his relationship with her. While mother presented evidence that she had pleasant visits with Matthew, during which they enjoyed loving contact, and he recognized her as his mother and enjoyed the visits, this was not enough. Since contact between a parent and child generally confers some benefit on a child, mother had to demonstrate more than pleasant visits or loving contact to compel a finding that termination would be detrimental to Matthew. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953-954.)

There was simply no evidence, let alone uncontradicted and unimpeached proof, that Matthew would be greatly harmed if he could no longer see mother. (*Lorenzo C.*, *supra*, 54 Cal.App.4th at p. 1342.) Mother points to Croom's statements early in the case that Matthew was extremely bonded to mother, but ignores the lack of supporting evidence for those statements. It was apparent from the testimony presented at the section 366.26 hearing that while Matthew knew who his mother was and he was loving toward her during visits, he did not regard her as the parental figure in his life. As Rachel testified, Matthew knew mother as "the other mom," and when mother asked him if he wanted to come live with her, Matthew cried and asked for "his mommy and daddy," meaning his foster parents. According to Croom, Matthew never asked for additional visits with mother or more contact with her. When mother was asked why Matthew would be emotionally harmed if he could no longer visit her, mother's only response was because she is his mother.

Mother contends that termination of her parental rights was not warranted because, as shown by evidence she submitted with the section 388 petition she filed before the section 366.26 hearing, she completed her case plan after services were terminated and has maintained a sober, responsible lifestyle for nearly nine months. Mother likens her case to that of *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*) and *In re Amber M.* (2002)

103 Cal.App.4th 681 (*Amber M.*). Mother's argument does not persuade us either factually or legally.

While the evidence mother cites shows she was making progress in correcting the problems which led to Matthew's removal, she did not complete her case plan, as she claims. As we explained in our prior opinion from the appeal of the denial of the section 388 petition, although at the time the petition was filed mother had remained sober for less than six months, and had participated in parenting education and domestic violence classes that were part of her case plan, she had not completed either program and had not yet begun to engage in individual counseling. (*In re Matthew V.* (Feb. 2, 2012, F063066), p. 11.) While mother's progress was commendable, the evidence does not support her claim that she completed her case plan.

In any event, neither case she relies on stands for the proposition that a parent's efforts to reunify coupled with regular, pleasant, and affectionate visits compels a finding that termination would be detrimental to the child. While the appellate courts in both cases mentioned the parent's compliance with his or her case plan as evidence of his or her devotion to the child or children, that was not the linchpin of either decision. (*S.B.*, *supra*, 164 Cal.App.4th at p. 300; *Amber M.*, *supra*, 103 Cal.App.4th at p. 690.) Instead, in both cases there was uncontroverted third-party evidence, including expert opinion, of a strong attachment between the parent and child or children, and the potential for harm to the child or children should that attachment be severed. (*S.B.*, *supra*, 164 Cal.App.4th at pp. 295–296; *Amber M.*, *supra*, 103 Cal.App.4th at pp. 689–690.) In this case, mother presented no such evidence.

Under these circumstances, the juvenile court reasonably could determine that termination would not deprive Matthew of a substantial, positive emotional attachment such that he would be greatly harmed. Accordingly, the court did not abuse its discretion by rejecting mother's detriment claim.

DISPOSITION

The order terminating parental rights is affirmed.